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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,162	02/14/2001	John A. Kupke	A34431	8337

21003 7590 09/27/2002

BAKER & BOTTS  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

POPOVICS, ROBERT J

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 09/27/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-9

**Office Action Summary**Application No.  
09/702,162Applicant(s)  
KupkeExaminer  
PopovicsGroup Art Unit  
1724*—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—***Period for Reply**

30 DAYS

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

Responsive to communication(s) filed on 3/4/02

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-13 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 1-13 are subject to restriction or election requirement

**Application Papers**

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper N (s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

**Office Action Summary**

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to a FILTRATION MODULE, classified in class 210, subclass 293.
  - II. Claims 9-12, drawn to a METHOD OF REPLACING A FILTER ELEMENT OF A FILTRATION SYSTEM, classified in class , subclass 767.
  - III. Claim 13, drawn to a FILTRATION SPACER MODULE, classified in class 428, subclass 542.8.
2. Inventions of Group II and Groups I & III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus, since the methods claims fail to recite a “porous plate.”
3. Inventions of Group I and Group III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions a filtration module and a filtration spacer module.

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, or Group III, nor is the search required for Group II required for Group III, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. This application contains claims directed to the following patentably distinct species of the claimed invention:

<i>Species</i>	<i>Corresponding Drawing Figure</i>
I	3-5
II	6

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims appear to generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon,

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including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. During a telephone conversation with Mr. Francis J. Hone, Esq. on September 23, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8. At that time however, the election of species requirement set forth above was not discussed. This requirement is being made in writing to address the election of species requirement. Affirmation of this election must be made by applicant in replying to this Office action.

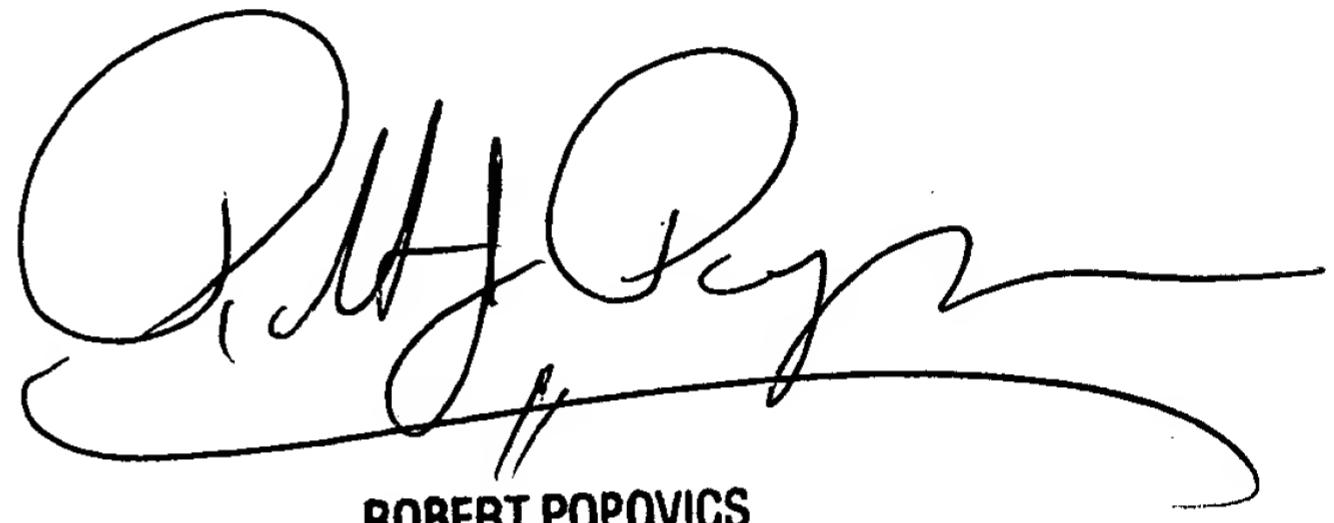
*Specification*

9. Applicant is requested to point out that portion of the specification/drawings which discusses/illustrates the “*flange*” recited in the claims.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Popovics whose telephone number is (703) 308-0684.

RJP  
September 25, 2002

A handwritten signature in black ink, appearing to read "RJP" followed by a stylized surname.

ROBERT POPOVICS  
PRIMARY EXAMINER